

DEPARTMENT OF THE TREASURY
INTERNAL REVENUE SERVICE
WASHINGTON, D.C. 20224

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Contact Person:

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4942.03-05
4943.00-00
4944.00-00
4945.04-06
6033.02-01

Contact Number:

OP: E: EO: T: 2

Legend:

X =
Y =

Dear Sir or Madam:

This is in reply to your rulings request of October 1, 1998, on X's proposed transfer of all of its assets to Y pursuant to section 507(b)(2) of the Internal Revenue Code.

X and Y are exempt from federal income tax under section 501(c)(3) of the Code and are private foundations under section 509(a) of the Code. X will transfer all of its assets to Y, which is effectively controlled by the same individuals who control X. X has no expenditure responsibility grants outstanding under section 4945(h) of the Code. You represent that this transfer will not result in any excess business holdings under section 4943 of the Code.

Section 501(c)(3) of the Code provides for the exemption from federal income tax of nonprofit organizations organized and operated exclusively for charitable and/or other exempt purposes under that section.

Section 509(a) of the Code describes certain organizations exempt from federal income tax under section 501(c)(3) of the Code that are private foundations subject to the private foundation provisions of Chapter 42 of the Code.

Section 507(a)(1) of the Code provides that a private foundation may voluntarily terminate its private foundation status by submitting to the Internal Revenue Service a statement of its intention to terminate its private foundation status and by paying the termination tax, if any, under section 507(c) of the Code.

Section 507(c) of the Code imposes excise tax on any private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This tax under section 507(c) of the Code is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's exempt status under section 501(c)(3) of the Code, or (b) the value of the net assets of the private foundation.

Section 507(b)(2) of the Code provides that, in a transfer of assets by one private foundation to another private foundation, the transferee private foundation shall not be treated as a newly created organization.

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Section 1.507-3(c)(1) of the Income Tax Regulations provides that a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, including any significant disposition of 25% or more of the transferor's assets.

Section 1.507-3(a)(1) of the regulations provides that, in a transfer of assets from one private foundation to another private foundations pursuant to a reorganization, the transferee foundation will not be treated as a newly created organization, but will succeed to the transferor foundation's aggregate tax benefits under section 507(d) of the Code.

Section 507(d) of the Code provides that the aggregate tax benefits of a private foundation include the value of its exemption from federal income tax and of the deductions taken by its donors during its existence.

Section 1.507-3(a)(9)(ii) of the regulations indicates that a transfer of assets pursuant to section 507(b)(2) of the Code does not relieve the transferor private foundation from filing its own final return as required by section 6043(b) of the Code.

Section 1.507-1(b)(9) of the regulations provides that a private foundation which transfers all of its net assets to another private foundation is not required to file its annual information returns required by section 6033 of the Code for years subsequent to its tax year of such transfer when it no longer has any assets or activities.

Section 1.507-3(a)(5) of the regulations provides that a transferor private foundation is required to meet its distribution requirements under section 4942 of the Code for its tax year in which it makes a transfer under section 507(b)(2) of the Code of its assets to another private foundation.

Section 1.507-3(a)(9)(i) of the regulations indicates that, if a transferor private foundation transfers assets to one or more private foundations controlled by the same persons who control the transferor foundation, each transferee foundation will be treated as if it were the transferor foundation, for purposes of sections 4940 through 4948 and sections 507 through 509 of the Code. Each transferee is treated as the transferor in the proportion which the fair market value of the transferor's assets that were transferred bears to the fair market value of all of the assets of the transferor immediately before the transfer.

Section 1.507-4(b) of the regulations provides that the tax on termination of private foundation status under section 507(c) of the Code does not apply to a transfer of assets pursuant to section 507(b)(2) of the Code.

Sections 1.507-1(b)(7) and 1.507-3(d) of the regulations provide that a transferor private foundation's transfer of assets under section 507(b)(2) of the Code will not be a termination of the transferor's status as a private foundation under section 509(a) of the Code.

Section 4940 of the Code imposes excise tax on certain investment income of a private foundation.

Section 4941 of the Code imposes excise tax on any act of self-dealing between a private foundation and any of its disqualified persons described in section 4946 of the Code.

Section 53.4946-1(a)(8) of the Foundation and Similar Excise Taxes Regulations provides that an organization exempt from federal income tax under section 501(c)(3) of the Code is not a disqualified person for purposes of section 4941 of the Code.

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Section 4942 of the Code provides that a private foundation must expend annual qualifying distributions under section 4942(g) of the Code for the conduct of its exempt purposes.

Section 4942(g)(1)(A) of the Code provides that a private foundation does not make any qualifying distribution under section 4942(g) where the distribution is a contribution to either: (i) an organization controlled by the transferor or by one or more of the transferor's disqualified persons, or (ii) a private foundation that is not an "operating foundation" under section 4942(j)(3).

Section 4942(g)(3) of the Code requires that a transferor private foundation, in order to have a qualifying distribution for its grant to another private foundation, must have adequate records, as required by section 4942(g)(3)(B), to show that the transferee private foundation, in fact, subsequently made qualifying distributions that were equal to the amount of the transfer received and that were paid out of the transferee's own corpus within the meaning of section 4942(h). Such transferee private foundation's qualifying distributions must be expended before the close of the transferee's first tax year after the transferee's tax year in which it received the transfer.

Revenue Ruling 78-387, 1978-2 C.B. 270, describes the carry-over of a transferor private foundation's excess qualifying distributions under section 4942(i) of the Code where the transferor and the transferee foundations are controlled by the same persons under section 1.507-3(a)(9)(i) of the regulations. Under that regulation, the transferee is treated as the transferor so that the transferee can reduce its own distributable amount under section 4942 by the amount, if any, of its transferor's excess qualifying distributions carryover under section 4942(i).

Section 4943 of the Code imposes excise tax on any private foundation's excess business holdings as defined in that section.

Section 4944 of the Code imposes excise tax on any private foundation's investment that jeopardizes its exempt purposes.

Section 4945 of the Code imposes excise tax upon any private foundation's making of a taxable expenditure under section 4945(d).

Section 4945(d)(4) of the Code provides that, in order to avoid making a taxable expenditure, a transferor private foundation must exercise "expenditure responsibility" under section 4945(h) of the Code on its grant(s) to another private foundation.

Section 4945(h) of the Code defines expenditure responsibility in terms of the grantor private foundation requiring proper pre-grant and post-grant reports from the grantee private foundation on the grantee's uses of the grant.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that has transferred all of its assets to another private foundation pursuant to section 507(b)(2) of the Code is not subject to any expenditure responsibility requirement under section 4945(h) of the Code with respect to such transfer.

Section 4945(d)(5) of the Code provides that a taxable expenditure includes any amount expended by a private foundation for purposes other than exempt purposes.

Sections 53.4945-6(c)(3) of the regulations allows a private foundation to transfer assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945 of the Code.

Sections 6033 and 6043(b) of the Code and sections 1.6033-2, 1.6033-3, and 1.6043-3 of the regulations provide for the filing of an annual information tax return, Form 990-PF, by a private foundation. Under section 1.6033-2(e), the return is due by the 15th day of the fifth month after the end of the private foundation's tax year.

Analysis

X will transfer all of its assets to Y. Your requested rulings are discussed below:

1.

Because X's transfer of assets to Y will be for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code for exempt purposes, X's transfer will not adversely affect the exemptions of X or Y under section 501(c)(3) of the Code.

2.

Under section 1.507-3(c)(1) of the regulations, a transfer under section 507(b)(2) of the Code includes a transfer of assets from one private foundation to one or more other private foundations pursuant to any reorganization, including a significant disposition of 25% or more of the transferor foundation's assets. Because X will transfer all of its assets to Y, X's transfer will be a significant disposition of its assets under section 1.507-3(c)(1) of the regulations and, thus, will be a transfer within section 507(b)(2) of the Code.

3.

Under section 1.507-4(b) of the regulations, X's transfer of all of its assets pursuant to section 507(b)(2) of the Code will not cause termination of its private foundation status under section 509(a) of the Code and, thus, will not result in any termination tax under section 507(c) of the Code.

4.

Section 507(c) of the Code imposes excise tax on a private foundation which voluntarily terminates its private foundation status pursuant to section 507(a)(1) of the Code. This tax under section 507(c) of the Code is equal to the lower of: (a) the aggregate tax benefits that have resulted from the foundation's exemption from federal income tax under section 501(c)(3) of the Code, or (b) the value of the net assets of the foundation. After X transfers all of its assets to Y, the value of X's assets will be zero when and if X notifies the Service of voluntary termination of its private foundation status pursuant to section 507(a)(1) of the Code and, thus, such termination of X's private foundation status under section 509(a) of the Code will not result in any termination tax due under section 507(c) of the Code.

5.

Under section 1.507-3(a)(9)(i) of the regulations, after X transfers all of its assets to Y pursuant to section 507(b)(2) of the Code, X's transferee Y will be treated as if it were X, for purposes of Chapter 42 and sections 507 through 509 of the Code. Thus, Y may meet X's distribution requirements under section 4942(g) of the Code for the tax year of X's transfer to Y and, if so, X will not be required to make its own distributions for that tax year under section 4942 of the Code. Also, as in Revenue Ruling 78-387, after X transfers all of its assets to Y, its transferee Y may reduce its own distributable amount under section 4942 of the Code by X's excess qualifying distributions carryover, if any, under section 4942(i) of the Code. Also, after X's transfer, Y may include X's investment income under section 4940 of the Code in Y's tax return and may pay the excise tax on X's net investment income at the same time that the tax would have been paid by X. Also, X's transfer will not subject X or Y to the excise tax on investment income under section 4940 of the Code.

Section 53.4945-6(c)(3) of the regulations indicates that a private foundation can transfer its assets pursuant to section 507(b)(2) of the Code to organizations exempt under section 501(c)(3) of the Code without the transfers being taxable expenditures under section 4945. X's transfer to Y for exempt purposes will not be a taxable expenditure under section 4945 of the Code.

Section 1.507-3(a)(7) of the regulations provides that a private foundation that transfers all of its assets to another private foundation pursuant to section 507(b)(2) of the Code is not subject to any expenditure responsibility requirement under section 4945(h) of the Code with respect to such transfer. Thus, X will not be required to exercise expenditure responsibility under section 4945(h) of the Code with respect to its transfer of all of its assets to Y.

6.

You state that, after X's transfer of all of its assets to Y, X and Y do not intend to meet the requirements of section 4942(g)(3) of the Code, described above. Thus, X's transfer to Y will not be a qualifying distribution toward satisfaction of its transferee Y's distribution requirements under section 4942 of the Code if X and Y do not meet the requirements of section 4942(g)(3) of the Code.

7.

X's transfer of assets to Y will not subject X to excise tax on investment income under section 4940 of the Code.

8.

Under section 4941 of the Code, X's transfer will not be an act of self-dealing because the transfer is for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, which is not a disqualified person, for purposes of section 4941 of the Code, pursuant to section 53.4946-1(a)(8) of the regulations.

9.

X's transfer of all of its assets to Y will not cause Y to have any excess business holdings under section 4943 of the Code and, thus, will not result in tax under that section.

10.

Because X's transfer will be made for exempt purposes to an organization exempt from federal income tax under section 501(c)(3) of the Code, X's transfer will not be a jeopardizing investment or result in tax under section 4944 of the Code.

11.

Under section 1.507-1(b)(9) of the regulations, X will not be required to file its annual information return, Form 990-PF, under section 6033 of the Code for tax years subsequent to its tax year in which it transfers all of its assets to Y when X will have no assets. X's final annual return on Form 990-PF will be due on the 15th day of the 5th month after the end of X's tax year in which X transfers all of its assets to Y.

Accordingly, we rule that:

1. X's transfer of all of its assets to Y will not adversely affect the exemptions from federal income tax under section 501(c)(3) of the Code of X or Y.

2. X's transfer of all of its assets to Y will be a transfer of assets under section 507(b)(2) of the Code.

3. X's transfer of all of its assets to Y under section 507(b)(2) of the Code will not result in termination under section 507(a) of the Code of X's private foundation status under section 509(a) of the Code and will not result in the imposition of a termination tax under section 507(c) of the Code.

4. X's voluntary termination of its private foundation status under section 509(a) of the Code by notice to the Service pursuant to section 507(a)(1) of the Code at least one day after it transfers all of its assets to Y, will be a termination under section 507(a)(1) of the Code but, because X will have no assets upon its termination, no termination tax under section 507(c) of the Code will be due.

5. After X transfers all of its assets to Y pursuant to section 507(b)(2) of the Code, Y will be treated as if it were X, for purposes of sections 4940 through 4948 of the Code and sections 507 through 509 of the Code.

5.a. Y may meet X's distribution requirements under section 4942 of the Code for X's tax year of its transfer to Y and, if so, X will not be required to make its own distributions under section 4942 of the Code for X's tax year in which its transfer is made.

5.b. After X's transfer, X's excess qualifying distributions carryover, if any, under section 4942(i) of the Code may be used by its transferee Y to reduce Y's distributable amount under section 4942 of the Code.

5.c. After X's transfer, Y will include X's investment income under section 4940 of the Code in Y's tax return and pay the excise tax on X's net investment income.

5.d. X's transfer of all of its assets to Y will not be a taxable expenditure under section 4945 of the Code, and X will not be required to exercise expenditure responsibility under section 4945(h) of the Code.

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5.e. X's tax basis in each asset transferred to Y will be carried over to Y for purposes of section 4940 of the Code.

6. X's transfer of all of its assets to Y will not be a qualifying distribution toward satisfaction of transferee Y's distribution requirements under section 4942 of the Code if Y does not meet the requirements under section 4942(g)(3) of the Code.

7. X's transfer of assets to Y will not subject X to the excise tax on net investment income under section 4940(a) of the Code.

8. X's transfer will not be an act of self-dealing under section 4941 of the Code and will not subject X or its directors to tax under section 4941 of the Code.

9. X's transfer of its assets will not cause Y to have excess business holdings or result in tax under section 4943 of the Code.

10. X's transfer will not be a jeopardizing investment or result in tax under section 4944 of the Code.

11. X will not be required to file its annual information returns under section 6033 of the Code for tax years subsequent to its tax year in which it transfers all of its assets to Y. X's return for its tax year in which it transfers all of its assets to Y will be due by the 15th day of the fifth month after the end of X's tax year of the transfer.

Because this ruling letter could help to resolve any questions, please keep it in your permanent records.

This ruling letter is directed only to the organizations that requested it. Section 6110(j)(3) of the Code provides that it may not be used or cited as precedent.

Sincerely,

(signed) Garland A. Carter

Garland A. Carter
Chief, Exempt Organizations
Technical Branch 2

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